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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL ROBERT COLLINS,

Defendant and Appellant.

2d Crim. No. B202533
(Super. Ct. No. 2005032145)
(Ventura County)

Michael Robert Collins appeals a judgment entered after he pleaded guilty to possession of methamphetamine, and admitted serving a prior prison term. (Health & Saf. Code, § 11377, subd. (a); Pen. Code, § 667.5, subd. (b).)¹ Among other things, we conclude the trial court properly denied Collins's motion to suppress evidence. We affirm.

FACTS AND PROCEDURAL HISTORY

Prior to entering his guilty plea, Collins brought a motion to suppress evidence of methamphetamine found during his detention in a parked vehicle in a shopping center. Evidence presented at the suppression hearing established this:

Sometime before September 15, 2007, a citizen informant spoke with Ventura County Sheriff's Deputy Harry Laubacher, and informed him that "Brett Mosley" sold methamphetamine from a residence located at 2334 Haywood Street in Simi Valley.

¹ All further statutory references are to the Penal Code unless stated otherwise.

The informant described Mosley as a 35-year-old white male with a stocky build who was on probation. The informant also stated that Mosley drove a black truck. Laubacher confirmed Mosley's probation search terms and learned that he had a suspended driver's license.

On September 15, 2007, Laubacher observed the Haywood Street residence, and saw a white male with a stocky build leave the home and drive away in a black truck. Laubacher followed the truck to a nearby shopping center. There, he saw another driver pull alongside the pickup truck, enter the truck, and then leave the truck and drive away. Laubacher believed that he observed an illegal drug transaction.

Laubacher contacted Simi Valley Police Officer Patrick Zayicek and directed that he stop and arrest the driver of the black truck. Laubacher informed Zayicek that the driver, "Brett Mosley," was on probation with search terms and had a suspended driver's license.

Zayicek drove his patrol car alongside the black truck, parked near a fast food restaurant. In fact, the driver was Collins, not "Brett Mosley." When Zayicek approached and spoke to Collins, he saw that Collins was agitated and nervous, moved awkwardly and rigidly, and spoke rapidly. Zayicek believed that Collins was under the influence of illegal drugs.

Zayicek ordered Collins to leave the truck and sit on the street curb. Collins consented to a search request. Zayicek found methamphetamine and Vicodin tablets in Collins's clothing pockets. A search of the pickup truck revealed additional methamphetamine and Vicodin tablets, including a "line" of methamphetamine available for immediate use.

Collins testified that he informed Zayicek that he was not "Brett Mosley." He also testified that he did not consent to a search of his person or the truck.

The trial court denied Collins's motion to suppress evidence of the illegal drugs. The court ruled that the "good faith rule" applied, although Deputy Laubacher received an incorrect name.

Thereafter, Collins pleaded guilty to possession of methamphetamine, and admitted that he served a prior prison term. The trial court denied his motion for deferred entry of judgment ("DEJ"), suspended imposition of sentence, and placed him on formal probation for 36 months pursuant to section 1210.1. It also dismissed charges of being under the influence of drugs, and driving with a suspended or revoked license. (Health & Saf. Code, § 11550, subd. (a); Veh. Code, § 14601.1, subd. (a).)

Collins appeals and contends that: 1) the prosecution erred by finding him ineligible for DEJ; 2) the trial court erred by denying the motion to suppress evidence.

DISCUSSION

I.

Collins argues that the prosecutor erred by finding him ineligible for DEJ because insufficient evidence exists that he committed a narcotics-related offense not listed in the DEJ statute. (§ 1000, subd. (a)(3).)

After oral argument we asked the parties to submit letter briefs concerning whether Collins was required to obtain a certificate of probable cause to pursue this issue on appeal. We conclude that Collins may not raise this issue because he has not complied with the certificate of probable cause requirement of section 1237.5. Pursuant to that section, and with only two exceptions, a defendant who pleads guilty or no contest may not appeal the conviction unless he obtains a certificate of probable cause. Collins does not dispute that he did not request or obtain a certificate of probable cause. Thus, he is limited in this appeal to the two exceptions to the certificate requirement--issues regarding denial of a motion to suppress evidence, and issues concerning the degree of the crime and the penalty imposed. (*People v. Buttram* (2003) 30 Cal.4th 773, 780.)

In *People v. Padfield* (1982) 136 Cal.App.3d 218, 228, the court stated: "Since a factually guilty but otherwise eligible defendant is entitled to be diverted, his plea of guilty cannot be deemed a waiver of his asserted but denied right to diversion. [Fn. omitted.] We hold therefore that the wrongful denial of pretrial diversion constitutes 'other grounds going to the legality of the proceedings' (Pen. Code, § 1237.5), and may be raised on appeal by a certificate of probable cause after a plea of guilty or nolo

contendere." Although *Padfield* arose under the earlier "diversion" statute (§ 1000 et seq.), we find no difference between that statute and the current statute that would undermine the reasoning of *Padfield*. In any event, the evidence shows that Collins drove his truck. The prosecutor's references to section 1000, subdivision (a)(3), and *People v. Duncan* (1990) 216 Cal.App.3d 1621 are apt.

II.

Collins asserts that the trial court erred by not suppressing evidence of the illegal drugs found on his person and in his truck because he was detained unlawfully. He argues that his detention and subsequent search cannot be justified as a probation search of "Brett Mosley" because the police officers' misidentification was unreasonable. (*People v. Willis* (2002) 28 Cal.4th 22, 38-39 [exclusion of contraband required where police officers search in mistaken belief that defendant was a parolee].) Collins points out that police officers failed to obtain a more detailed description of the black truck or of "Brett Mosley."

Upon review of the trial court's ruling on a motion to suppress evidence, we apply the substantial evidence test to the court's factual determinations, with all presumptions in favor of the court's findings. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.) The question whether the search was reasonable pursuant to the Fourth Amendment, however, is an issue of law that we independently decide. (*Ibid.*)

Here the detention was reasonable within the Fourth Amendment because police officers made a reasonable factual mistake regarding identity. (*Hill v. California* (1971) 401 U.S. 797, 802-804 [lawful arrest where police officers reasonably mistake one person for another].) Based upon information provided by a citizen informant and their own surveillance, police officers believed that "Brett Mosley" was driving with a suspended license and selling methamphetamine from his home and in the shopping center. The officers had his physical description and that of his vehicle. Collins matched that physical description and drove a similar vehicle. "[S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment and on the

record before us the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time." (*Id.* at p. 804.)

Moreover, upon approach, Officer Zayicek observed that Collins appeared to be under the influence of a central nervous system stimulant; he was nervous, agitated, moved awkwardly and rigidly, and spoke rapidly. His behavior and symptoms provided a reasonable basis for further detention and a search for illegal drugs. (*People v. Carter* (1977) 75 Cal.App.3d 865, 869.) The trial court also impliedly found that Collins consented to a search of his person and to his truck. (*People v. Glaser* (1995) 11 Cal.4th 354, 362 [deference to trial court's express or implied factual findings that are supported by substantial evidence].)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Colleen Toy White, Judge
Superior Court County of Ventura

Lyn A. Woodward, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, John R.
Gorey, A. Scott Hayward, Deputy Attorneys General, for Plaintiff and Respondent.